

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, §
Plaintiff-Respondent, §
§
V. § CIVIL ACTION NO. H-12-3226
§ CRIMINAL ACTION NO. H-10-0197-2
STEVEN T. CARR, §
§
Defendant-Movant. §

ORDER ADOPTING THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW, AND THE RECOMMENDATION OF THE MAGISTRATE JUDGE

This case was referred to the Magistrate Judge for an evidentiary hearing on Movant Steven T. Carr's claim that his counsel was ineffective for failing to advise him of the consequences of pleading guilty without a plea agreement versus going to trial. An evidentiary hearing was held before the Magistrate Judge on May 5, 2014. The Court has received from the Magistrate Judge Proposed Findings of Fact and Conclusions of Law, and an associated Recommendation that this § 2255 proceeding be dismissed with prejudice on the merits. Carr has filed "Objections to Magistrate's Findings" (Document No. 40 in Civil Action No. H-12-3226). The Court, after having made a *de novo* determination of Carr's remaining claim and having read the entirety of the transcript of the evidentiary hearing and carefully considered the evidence received, is of the opinion that the findings and recommendations of the Magistrate Judge are correct and should be and hereby are accepted by the Court in their entirety.

It is ORDERED and ADJUDGED for the reasons set forth in the Magistrate Judge's Proposed Findings of Fact and Conclusions of Law, filed on September 22, 2014, which is adopted in its entirety as the opinion of this Court, and the reasons set forth in the Court's previous Order of January 31, 2014, which adopted the December 18, 2013 Amended Memorandum and Recommendation of the Magistrate Judge, that all relief is DENIED on the claims Movant Steven T. Carr raised in his Motion and Supplemental Motion to Vacate, Set Aside or Correct Sentence (Document Nos. 228 & 248), and this § 2255 proceeding is DISMISSED WITH PREJUDICE on the merits. It is further

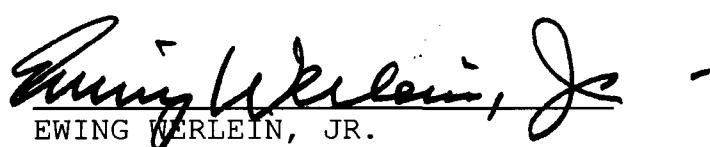
ORDERED that a Certificate of Appealability is DENIED. A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 120 S. Ct. 1595, 1603-1604 (2000) (internal quotations and citations omitted). Stated differently, where the claims have been dismissed on the merits, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 1604; Beasley v. Johnson, 242 F.3d 248, 263 (5th Cir.), cert. denied, 122

S.Ct. 329 (2001). When the claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. A district court may deny a certificate of appealability *sua sponte*, without requiring further briefing or argument. Alexander v. Johnson, 211 F.3d 895, 898 (5th Cir. 2000).

For the reasons set forth in the Proposed Findings of Fact and Conclusions of Law, and the previous Memorandum and Recommendation, which was adopted by the Court on January 31, 2014 (Document Nos. 259 & 261), the Court determines that reasonable jurists would not debate the correctness of the Proposed Findings of Fact and Conclusions of Law or the associated recommendation that all relief be DENIED on Movant's § 2555 Motion and Supplemental Motion to Vacate, Set Aside or Correct Sentence.

The Clerk will enter this Order and send copies to all parties of record.

Signed at Houston, Texas this 8th day of December, 2014.


EWIN WERLEIN, JR.
UNITED STATES DISTRICT JUDGE